

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 9 April 2020

Public Authority: Cheshire East Council
Address: Municipal Building
Earle Street
Crewe
CW1 8BJ

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence which has passed between Cheshire East Council and Jodrell Bank Observatory in respect of certain planning applications identified in her request. The Council identified 10 letters and 2 emails which it refused to disclose to the complainant in reliance on Regulation 12(4)(e) of the EIR. Following the Commissioner's intervention in this matter, the Council withdrew its application of Regulation 12(4)(e) and disclosed the relevant information to the complainant.
2. The Commissioner's decision is that Cheshire East Council has complied with Regulation 5(1) of the EIR. By making its disclosure of information after the twenty working day compliance period required by Regulation 5(2), the Council has contravened that provision.
3. No further action is required in this matter.

Request and response

4. On 18 September 2019, the complainant wrote to the Council and submitted the following request for recorded information:

"Could you please send me correspondence between Jodrell Bank Observatory and Cheshire East planning department in relation to planning applications:

16/0604C Land Adjacent to Padgate, Twemlow Lane, Cranage. Planning

application 16/2210C Birtles Cottage, Cranage.
Planning application 17/4451C 51 Main road, Goostrey
Planning application 15/4791C Big Stone cottage, Cranage
Planning application 19/1711M Holly Tree Farm, Plumley
Planning application 16/5385C Hiverley Cottage, Twemlow Green
Planning Application 19/0836C Hollins Farm, Cranage
Planning Application 18/2491C Hiveley, Cranage
Planning Application 18/4079C The Granage Livery Stables, Goostrey
Planning Application 19/1902C Saltersford farm, Twemlow Green
Planning application 16/2005C Levendale, Cranage
Planning application 15/4313C Manor view, Cranage
Planning application 16/2082C Land north of oak tree lane, Cranage
Planning application 19/0836C Hollins Farm, Cranage

As with the applications could you please release all correspondence between yourselves and Jodrell Bank (Relating to Electromagnetic interference of Developments and their effect as there is insufficient evidence and date on the council planning website)."

5. The Council wrote to the complainant on 20 September 2019 to ask her to clarify her request on the grounds that the Council needed further details to identify and locate the information.
6. On 20 September 2019, the complainant informed the Council that the time frame for the information she seeks is within the past 4 years beginning November 2015 to present.
7. On 9 October 2019, the Council provided the complainant its substantive response. The Council confirmed to the complainant that it holds the information she had requested but refused to supply that information in reliance on Regulations 6(1)(b) and 12(4)(e) of the EIR.
8. On 15 October 2019, the complainant wrote to the Council to request an internal review of its handling of her request. The complainant's email contained a number of comments, opinions and questions about the information which the Council has published in connection with the planning applications listed in her request.
9. On 14 November 2019, the Council wrote to the complainant to provide her with its internal review decision. The Council responded to each of the complainant's comments, opinions and questions and, where the Council advised the complainant that it does not hold the information she seeks, the Council advised her to redirect her questions to Jodrell Bank via the University of Manchester, Science and Technology website.

Scope of the case

10. The complainant contacted the Commissioner 14 November 2019 to complain about the way her request for information had been handled.
11. Having reviewed the documents which the complainant had provided in support of her complaint, the Commissioner advised the complainant that her investigation would be to determine whether Cheshire East Council has handled her request in accordance with the EIR. Specifically, on whether the Council is entitled to rely on Regulation 12(4)(e) of the EIR as its grounds for refusing to provide the withheld information.
12. The Commissioner also advised the complainant that she would also investigate whether the Council has complied with Regulation 5(1) of the EIR in respect of information it may or may not hold, which is relevant to the terms of her request.

Reasons for decision

13. Following its receipt of her enquiry, the Council advised the Commissioner that it no longer relies on Regulation 12(4)(e) to withhold any information falling within the scope of the complainant's request.
14. The Council identified 10 letters and two emails which were the subject of its previous application of Regulation 12(4)(e). The letters are from the Council to Jodrell Bank Observatory inviting the Observatory to make comments on the planning applications listed in the complainant's request.
15. The Council advised the Commissioner that the letters, referred to above, are not ordinarily published on its planning portal.
16. Having reviewed the 10 letters, the Council has informed the Commissioner that it is able to disclose them to the complainant and has now made that disclosure.
17. Additionally, the Council holds 7 emails which are relevant to the complainant's request. The Council says, "All the comments contained within the emails are on the planning portal other than the 2 emails of 6 July 2018. However, the plan to which they refer is on the Planning Portal".
18. Once more the Council has informed the Commissioner that, following its recent review, it is content for all the emails to be disclosed to the complainant and it has disclosed all 7 of the emails to the complainant.
19. Except for 10 letters and 2 of the 7 emails referred to above, the Council has assured the Commissioner that all the information it holds in respect

of the relevant planning applications is available on the Council's Planning Portal.

20. The Council makes the point that the letters, referred to above, are not ordinarily published on its Planning Portal.
21. To assure the complainant that the Council holds no further information falling within the scope of her request, the Commissioner asked the Council about the searches it carried out to ensure that it has complied with Regulation 5(1) of the EIR.
22. Under Regulation 5(1) of the EIR a public authority is required to 'make available on request' information which is environmental information.
23. To determine whether the Council has now complied with Regulation 5(1), the Commissioner applies the civil test. This test requires her to consider the question in terms of 'the balance of probabilities': it is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
24. The Council has assured the Commissioner that it has carried out searches of the relevant planning files and the relevant Case Officers' local accounts. The Council told the Commissioner that all the information relevant to the complainant's request would be held electronically and that it searched its records under each of the planning application references mentioned by the complainant in her request.
25. The Council also assured the Commissioner that no information relevant to the scope of the complainant's request has been destroyed or deleted. This is because the Town and Country Planning (Development Management Procedure) (England) Order 2015, requires this information to be retained.
26. Following her receipt of the information sent to her by the Council, the complainant contacted the Commissioner to discuss her complaint further.
27. The complainant informed the Commissioner that she still believed the Council holds information which is relevant to her request which it had not disclosed to her. The complainant identified 4 planning applications where she believes the Council must hold recorded information and she also asserted that the the Council must hold records of conversations it had had with Jodrell Bank Observatory.
28. The complainant was particularly concerned about some redacted information contained in emails which had been supplied to her by Jodrell Bank Observatory. Those emails list some of the Council's officers as being their senders or recipients and this leads the complainant to

believe that the Council must also hold unredacted copies of information disclosed to her by Jodrell Bank.

29. In the light of the complainant's renewed assertions, the Commissioner sent the Council copies of the emails referred to by the complainant and she asked the Council for its comments.
30. The Commissioner asked the Council to provide an assurance that it has disclosed all the information it holds in respect of the planning applications listed in the complainant's request and to explain the 4 redactions contained in the information disclosed to the complainant by Jodrell Bank.
31. The Commissioner was live to the possibility that the information disclosed to the complainant by Jodrell Bank may not be held by the Council.
32. On 27 February 2020, the Council confirmed to the Commissioner that it had located copies of the emails which had been supplied to the complainant by Jodrell Bank. The Council explained that its officers had revisited their email accounts and had searched for emails received during the period covered by the Jodrell Bank information.
33. The Council told the Commissioner that it had previously missed those emails because its previous searches had been focussed on the planning application numbers listed by the complainant, and not on the term 'Jodrell Bank'. The Council explained that when carried out a search under the term 'Jodrell Bank', that search yielded a great deal of information which is not relevant to the complainant's request.
34. The Council also confirmed that it does not hold any notes or phone calls relating to the planning applications listed by the complainant in her request.
35. On 13 March 2020, the Council wrote to the complainant following a its recent search of the email accounts of its planning officers. The Council sent the complainant unredacted copies of the information which Jodrell Bank Observatory had previously disclosed to her.
36. The Council explained to the complainant that the emails from the Council to Jodrell Bank appear at the foot of email chains. These emails appear to have led to internal discussions between officers of Jodrell Bank Observatory.
37. The Council said it could not find any record that the redacted information contained in the documents disclosed to the complainant by Jodrell Bank had originated within Cheshire East Council. The Council said it had found no further documents and it presumed that Jodrell

Bank would have explained what the redactions relate to when it made its disclosure.

38. The Commissioner has considered the Council's representations in respect of this matter. She is content that the Council has now carried out appropriate searches for information falling within the scope of the complainant's request and she accepts that on the balance of probability the Council does not hold any further information which is relevant to this request.
39. The Commissioner has decided that the Council has now complied with Regulation 5(1) of the EIR.
40. Regulation 5(2) requires a public authority that holds environmental information to make that Information available to the requester as soon as possible and no later than 20 working days after the date of receipt of the request.
41. By providing the complainant with the information she asked for outside of the twenty working day compliance period required by Regulation 5(2), the Council has contravened this provision.
42. The Commissioner must impress on the Council its need to carry out thorough and proper searches for information falling within the scope of a request.
43. The Commissioner accepts that, in this case, the complainant had referenced a number of planning applications in her request and that those applications were the obvious starting point to search for the information the complainant requires.
44. The fact that information relevant to the complainant's request was subsequently found in the email accounts of its planning officers, clearly indicates the Council's need to read a request objectively and then identify all the potential sources of information where relevant information might be found.
45. The Commissioner will use intelligence gathered from cases such as this to inform her office's insight and compliance function. This will align with the goal in the Commissioner's draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner's aim is to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our [Regulatory Action Policy](#).

Right of appeal

46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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